



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB1728

Introduced 2/22/2007, by Rep. Kevin Joyce

#### SYNOPSIS AS INTRODUCED:

225 ILCS 46/5  
225 ILCS 46/10  
225 ILCS 46/15  
225 ILCS 46/20  
225 ILCS 46/25  
225 ILCS 46/30

Amends the Health Care Worker Background Check Act. Provides that the Act applied to all employees of licensed or certified long-term care facilities who have or may have access to (instead of contact with) residents. Defines "access to" and makes changes to the definition of "health care employer" and "long-term care facility". Effective immediately.

LRB095 09794 RAS 30004 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Health Care Worker Background Check Act is  
5 amended by changing Sections 5, 10, 15, 20, 25, and 30 as  
6 follows:

7 (225 ILCS 46/5)

8 Sec. 5. Purpose. The General Assembly finds that it is in  
9 the public interest to protect the most frail and disabled  
10 citizens of the State of Illinois from possible harm through a  
11 criminal background check of certain health care workers and  
12 all employees of licensed and certified long-term care  
13 facilities who have or may have access to ~~contact with~~  
14 residents or have access to the living quarters or the  
15 financial, medical, or personal records of residents.

16 (Source: P.A. 94-665, eff. 1-1-06.)

17 (225 ILCS 46/10)

18 Sec. 10. Applicability. This Act applies to all individuals  
19 employed or retained by a health care employer as home health  
20 care aides, nurse aides, personal care assistants, private duty  
21 nurse aides, day training personnel, or an individual working  
22 in any similar health-related occupation where he or she

1 provides direct care or has access to long-term care residents  
2 or the living quarters or financial, medical, or personal  
3 records of long-term care residents. This Act also applies to  
4 all employees of licensed or certified long-term care  
5 facilities who have or may have access to ~~contact with~~  
6 residents or ~~access~~ to the living quarters or the financial,  
7 medical, or personal records of residents.

8 (Source: P.A. 94-665, eff. 1-1-06.)

9 (225 ILCS 46/15)

10 Sec. 15. Definitions. In ~~For the purposes of this Act, the~~  
11 ~~following definitions apply:~~

12 "Access to" means having the ability, right, or permission  
13 to approach, speak with, or make contact with a client,  
14 patient, or resident.

15 "Applicant" means an individual seeking employment with a  
16 health care employer who has received a bona fide conditional  
17 offer of employment.

18 "Conditional offer of employment" means a bona fide offer  
19 of employment by a health care employer to an applicant, which  
20 is contingent upon the receipt of a report from the Department  
21 of Public Health ~~State Police~~ indicating that the applicant  
22 does not have a record of conviction of any of the criminal  
23 offenses enumerated in Section 25.

24 "Direct care" means the provision of nursing care or  
25 assistance with feeding, dressing, movement, bathing,

1 toileting, or other personal needs, including home services as  
2 defined in the Home Health, Home Services, and Home Nursing  
3 Agency Licensing Act. The entity responsible for inspecting and  
4 licensing, certifying, or registering the health care employer  
5 may, by administrative rule, prescribe guidelines for  
6 interpreting this definition with regard to the health care  
7 employers that it licenses.

8 "Health care employer" means:

9 (1) the owner or licensee of any of the following:

10 (i) a community living facility, as defined in the  
11 Community Living Facilities Act;

12 (ii) a life care facility, as defined in the Life  
13 Care Facilities Act;

14 (iii) a long-term care facility, ~~as defined in the~~  
15 ~~Nursing Home Care Act;~~

16 (iv) a home health agency, home services agency, or  
17 home nursing agency as defined in the Home Health, Home  
18 Services, and Home Nursing Agency Licensing Act;

19 (v) a ~~comprehensive~~ hospice care program or  
20 volunteer hospice program, as defined in the Hospice  
21 Program Licensing Act;

22 (vi) a hospital, as defined in the Hospital  
23 Licensing Act;

24 (vii) a community residential alternative, as  
25 defined in the Community Residential Alternatives  
26 Licensing Act;

1 (viii) a nurse agency, as defined in the Nurse  
2 Agency Licensing Act;

3 (ix) a respite care provider, as defined in the  
4 Respite Program Act;

5 (ix-a) an establishment licensed under the  
6 Assisted Living and Shared Housing Act;

7 (x) a supportive living program, as defined in the  
8 Illinois Public Aid Code;

9 (xi) early childhood intervention programs as  
10 described in 59 Ill. Adm. Code 121;

11 (xii) the University of Illinois Hospital,  
12 Chicago;

13 (xiii) programs funded by the Department on Aging  
14 through the Community Care Program;

15 (xiv) programs certified to participate in the  
16 Supportive Living Program authorized pursuant to  
17 Section 5-5.01a of the Illinois Public Aid Code;

18 (xv) programs listed by the Emergency Medical  
19 Services (EMS) Systems Act as Freestanding Emergency  
20 Centers;

21 (xvi) locations licensed under the Alternative  
22 Health Care Delivery Act;

23 (2) a day training program certified by the Department  
24 of Human Services;

25 (3) a community integrated living arrangement operated  
26 by a community mental health and developmental service

1 agency, as defined in the Community-Integrated Living  
2 Arrangements Licensing and Certification Act; or

3 (4) the State Long Term Care Ombudsman Program,  
4 including any regional long term care ombudsman programs  
5 under Section 4.04 of the Illinois Act on the Aging, only  
6 for the purpose of securing background checks.

7 "Initiate" means the obtaining of the authorization for a  
8 record check from a student, applicant, or employee. The  
9 educational entity or health care employer or its designee  
10 shall transmit all necessary information and fees to the  
11 Illinois State Police within 10 working days after receipt of  
12 the authorization.

13 "Long-term care facility" means a facility licensed by the  
14 State or certified under federal law as a long-term care  
15 facility, including without limitation facilities licensed  
16 under the Nursing Home Care Act, a supportive living facility,  
17 an assisted living establishment, or a shared housing  
18 establishment or registered as a board and care home.

19 (Source: P.A. 93-878, eff. 1-1-05; 94-379, eff. 1-1-06; 94-570,  
20 eff. 8-12-05; 94-665, eff. 1-1-06; revised 8-29-05.)

21 (225 ILCS 46/20)

22 Sec. 20. Exceptions. (1) This Act shall not apply to:

23 (a) an individual who is licensed by the Department of  
24 Financial and Professional Regulation or the Department of  
25 Public Health under another law of this State;

1 (b) an individual employed or retained by a health care  
2 employer for whom a criminal background check is required  
3 by another law of this State; or

4 (c) a student in a licensed health care field  
5 including, but not limited to, a student nurse, a physical  
6 therapy student, or a respiratory care student unless he or  
7 she is employed by a health care employer in a position  
8 with duties involving direct care for clients, patients, or  
9 residents.

10 (2) A UCIA criminal history records check need not be  
11 redone by the University of Illinois Hospital, Chicago (U of I)  
12 or a program funded by the Department on Aging through the  
13 Community Care Program (CCP) if the U of I or the CCP: (i) has  
14 done a UCIA check on the individual; (ii) has continuously  
15 employed the individual since the UCIA criminal records check  
16 was done; and (iii) has taken actions with respect to this Act  
17 within 12 months after the effective date of this amendatory  
18 Act of the 91st General Assembly.

19 (Source: P.A. 91-598, eff. 1-1-00.)

20 (225 ILCS 46/25)

21 Sec. 25. Persons ineligible to be hired by health care  
22 employers and long-term care facilities.

23 (a) After January 1, 1996, January 1, 1997, or the  
24 effective date of this amendatory Act of the 94th General  
25 Assembly, as applicable, no health care employer shall

1 knowingly hire, employ, or retain any individual in a position  
2 with duties involving direct care for clients, patients, or  
3 residents, and no long-term care facility shall knowingly hire,  
4 employ, or retain any individual in a position with duties that  
5 involve or may involve contact with residents or access to the  
6 living quarters or the financial, medical, or personal records  
7 of residents, who has been convicted of committing or  
8 attempting to commit one or more of the offenses defined in  
9 Sections 8-1.1, 8-1.2, 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1,  
10 9-3.2, 9-3.3, 10-1, 10-2, 10-3, 10-3.1, 10-4, 10-5, 10-7, 11-6,  
11 11-9.1, 11-9.5, 11-19.2, 11-20.1, 12-1, 12-2, 12-3, 12-3.1,  
12 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6,  
13 12-4.7, 12-7.4, 12-11, 12-13, 12-14, 12-14.1, 12-15, 12-16,  
14 12-19, 12-21, 12-21.6, 12-32, 12-33, 16-1, 16-1.3, 16A-3, 17-3,  
15 18-1, 18-2, 18-3, 18-4, 18-5, 19-1, 19-3, 19-4, 20-1, 20-1.1,  
16 24-1, 24-1.2, 24-1.5, or 33A-2 of the Criminal Code of 1961;  
17 those provided in Section 4 of the Wrongs to Children Act;  
18 those provided in Section 53 of the Criminal Jurisprudence Act;  
19 those defined in Section 5, 5.1, 5.2, 7, or 9 of the Cannabis  
20 Control Act; those defined in the Methamphetamine Control and  
21 Community Protection Act; or those defined in Sections 401,  
22 401.1, 404, 405, 405.1, 407, or 407.1 of the Illinois  
23 Controlled Substances Act, unless the applicant or employee  
24 obtains a waiver pursuant to Section 40.

25 (a-1) After January 1, 2004, no health care employer shall  
26 knowingly hire any individual in a position with duties

1 involving direct care for clients, patients, or residents, and  
2 no long-term care facility shall knowingly hire any individual  
3 in a position with duties that involve or may involve access to  
4 ~~contact with~~ residents or ~~access~~ to the living quarters or the  
5 financial, medical, or personal records of residents, who has  
6 (i) been convicted of committing or attempting to commit one or  
7 more of the offenses defined in Section 12-3.3, 12-4.2-5, 16-2,  
8 16G-15, 16G-20, 18-5, 20-1.2, 24-1.1, 24-1.2-5, 24-1.6,  
9 24-3.2, or 24-3.3 of the Criminal Code of 1961; Section 4, 5,  
10 6, 8, or 17.02 of the Illinois Credit Card and Debit Card Act;  
11 or Section 5.1 of the Wrongs to Children Act; or (ii) violated  
12 Section 10-5 of the Nursing and Advanced Practice Nursing Act.

13 A UCIA criminal history record check need not be redone for  
14 health care employees who have been continuously employed by a  
15 health care employer since January 1, 2004, but nothing in this  
16 Section prohibits a health care employer from initiating a  
17 criminal history check for these employees.

18 A health care employer is not required to retain an  
19 individual in a position with duties involving direct care for  
20 clients, patients, or residents, and no long-term care facility  
21 is required to retain an individual in a position with duties  
22 that involve or may involve access to ~~contact with~~ residents or  
23 ~~access~~ to the living quarters or the financial, medical, or  
24 personal records of residents, who has been convicted of  
25 committing or attempting to commit one or more of the offenses  
26 enumerated in this subsection.

1 (b) A health care employer shall not hire, employ, or  
2 retain any individual in a position with duties involving  
3 direct care of clients, patients, or residents, and no  
4 long-term care facility shall knowingly hire, employ, or retain  
5 any individual in a position with duties that involve or may  
6 involve access to ~~contact with~~ residents or ~~access~~ to the  
7 living quarters or the financial, medical, or personal records  
8 of residents, if the health care employer becomes aware that  
9 the individual has been convicted in another state of  
10 committing or attempting to commit an offense that has the same  
11 or similar elements as an offense listed in subsection (a) or  
12 (a-1), as verified by court records, records from a state  
13 agency, or an FBI criminal history record check. This shall not  
14 be construed to mean that a health care employer has an  
15 obligation to conduct a criminal history records check in other  
16 states in which an employee has resided.

17 (Source: P.A. 93-224, eff. 7-18-03; 94-556, eff. 9-11-05;  
18 94-665, eff. 1-1-06; 94-1053, eff. 7-24-06.)

19 (225 ILCS 46/30)

20 Sec. 30. Non-fingerprint based UCIA criminal records  
21 check.

22 (a) Beginning on January 1, 1997, an educational entity,  
23 other than a secondary school, conducting a nurse aide training  
24 program must initiate a UCIA criminal history records check  
25 prior to entry of an individual into the training program. A

1 nurse aide seeking to be included on the nurse aide registry  
2 shall authorize the Department of Public Health or its designee  
3 that tests nurse aides or the health care employer or its  
4 designee to request a criminal history record check pursuant to  
5 the Uniform Conviction Information Act (UCIA) for each nurse  
6 aide applying for inclusion on the State nurse aide registry.  
7 Any nurse aide not submitting the required authorization and  
8 information for the record check will not be added to the State  
9 nurse aide registry. A nurse aide will not be entered on the  
10 State nurse aide registry if the report from the Department of  
11 State Police indicates that the nurse aide has a record of  
12 conviction of any of the criminal offenses enumerated in  
13 Section 25 unless the nurse aide's identity is validated and it  
14 is determined that the nurse aide does not have a disqualifying  
15 criminal history record based upon a fingerprint-based records  
16 check pursuant to Section 35 or the nurse aide receives a  
17 waiver pursuant to Section 40.

18 (b) The Department of Public Health shall notify each  
19 health care employer inquiring as to the information on the  
20 State nurse aide registry of the date of the nurse aide's last  
21 UCIA criminal history record check. If it has been more than  
22 one year since the records check, the health care employer must  
23 initiate or have initiated on his or her behalf a UCIA criminal  
24 history record check for the nurse aide pursuant to this  
25 Section. The health care employer must send a copy of the  
26 results of the record check to the State nurse aide registry

1 for an individual employed as a nurse aide.

2 (c) Beginning January 1, 1996, a health care employer who  
3 makes a conditional offer of employment to an applicant other  
4 than a nurse aide for position with duties that involve direct  
5 care for clients, patients, or residents must initiate or have  
6 initiated on his or her behalf a UCIA criminal history record  
7 check for that applicant.

8 (d) No later than January 1, 1997, a health care employer  
9 must initiate or have initiated on his or her behalf a UCIA  
10 criminal history record check for all employees other than  
11 those enumerated in subsections (a), (b), and (c) of this  
12 Section with duties that involve direct care for clients,  
13 patients, or residents. A health care employer having actual  
14 knowledge from a source other than a non-fingerprint check that  
15 an employee has been convicted of committing or attempting to  
16 commit one of the offenses enumerated in Section 25 of this Act  
17 must initiate a fingerprint-based background check within 10  
18 working days of acquiring that knowledge. The employer may  
19 continue to employ that individual in a direct care position,  
20 may reassign that individual to a non-direct care position, or  
21 may suspend the individual until the results of the  
22 fingerprint-based background check are received.

23 (d-5) Beginning on the effective date of this amendatory  
24 Act of the 95th General Assembly ~~January 1, 2006~~, each  
25 long-term care facility operating in the State must initiate,  
26 or have initiated on its behalf, a criminal history record

1 check for all employees hired on or after January 1, 2006 with  
2 duties that involve or may involve access to ~~contact with~~  
3 residents or ~~access~~ to the living quarters or the financial,  
4 medical, or personal records of residents.

5 (e) The request for a UCIA criminal history record check  
6 must be in the form prescribed by the Department of State  
7 Police.

8 (f) The applicant or employee must be notified of the  
9 following whenever a non-fingerprint check is made:

10 (i) that the health care employer shall request or have  
11 requested on his or her behalf a UCIA criminal history  
12 record check pursuant to this Act;

13 (ii) that the applicant or employee has a right to  
14 obtain a copy of the criminal records report from the  
15 health care employer, challenge the accuracy and  
16 completeness of the report, and request a waiver under  
17 Section 40 of this Act;

18 (iii) that the applicant, if hired conditionally, may  
19 be terminated if the criminal records report indicates that  
20 the applicant has a record of conviction of any of the  
21 criminal offenses enumerated in Section 25 unless the  
22 applicant's identity is validated and it is determined that  
23 the applicant does not have a disqualifying criminal  
24 history record based on a fingerprint-based records check  
25 pursuant to Section 35.

26 (iv) that the applicant, if not hired conditionally,

1 shall not be hired if the criminal records report indicates  
2 that the applicant has a record of conviction of any of the  
3 criminal offenses enumerated in Section 25 unless the  
4 applicant's record is cleared based on a fingerprint-based  
5 records check pursuant to Section 35.

6 (v) that the employee may be terminated if the criminal  
7 records report indicates that the employee has a record of  
8 conviction of any of the criminal offenses enumerated in  
9 Section 25 unless the employee's record is cleared based on  
10 a fingerprint-based records check pursuant to Section 35.

11 (g) A health care employer may conditionally employ an  
12 applicant for up to 3 months pending the results of a UCIA  
13 criminal history record check.

14 (Source: P.A. 94-665, eff. 1-1-06.)

15 Section 99. Effective date. This Act takes effect upon  
16 becoming law.